



Legal Clinic: questions and answers on Thailand property legal issues

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# Alternative Ownership

**Q.** I have reviewed my financial approach to real estate investment, following the global economic crisis. I have previously acquired real estate on a standalone private basis, and have found that I only use my residences for an aggregate of a few weeks a year at each location. After some research, I see that there are now in the market, a series of private residence clubs, fractional ownership opportunities and vacation clubs. I really like the idea of only paying for what I use, but legally I need to know that I really own it, and that I can therefore sell on confidently in the future. Can you explain the legal differences to me in simple terms? – *Frank Gerome, Dubai*

**A.** In the alternative ownership industry, there appears to an abundance of terminology and some meanings appear to be different from product to product and depending on the location. In terms of the legal differences below are the general distinctive categories:

**Timeshare or vacation clubs:** An interest in the use of a unit in a resort or hotel is documented through terms and conditions and contracts. There is no direct legal interest in the property by the consumer. These programmes of ownership vary in terms of quality of products and branding. Some large hotel brands operate vacation clubs. Exchange companies (very large companies in the US) actually allow vetted companies to enter their programmes, and then consumers can exchange their rights of use in order to change destinations. Terms and conditions can really vary according to the timeshare or vacation club. Purchases create depreciation as prospective purchasers always have the choice to buy themselves due to the volume of product available. However, the flexibility of these clubs is very attractive to the right type of consumer.

**Private residence clubs:** Any company can name their programme a 'private residence club' but the substance of the club can vary. However, typically such a club would involve a fractional ownership interest (defined below). A private residence club would relate to a specific bespoke 'high end' real estate product and it may be that there are several such residence which a consumer can exchange its rights for in order to use a wider scope of properties. Due to the 'high end' nature of such products, limited 'stock' of real estate, and a general commitment by developers of the programme and developers to a substantive programme, the re-sale values in such clubs are generally seen as more attractive than vacation clubs or timeshare. The legal documentation, if the club is indeed a 'fractional right' will involve a structure whereby the consumer will receive a 'deeded' or 'legal' interest in the product as a fraction of a whole legal interest in a unit.



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Fractional ownership: as per the above, fractional ownership can actually exist in various 'programmes'; 'private residence clubs'; 'destination ownership clubs' and a variety of other names covering the same type of legal right. The real estate relating to the fractional is typically owned locally in the relevant jurisdiction, and then either leased or through a company model, directly owned by, a fractional owners company. The fractional owners company has shares divided into the number of 'fractionals' relating to the real estate. The purchaser, through a sale and purchase agreement purchases a share; and receives a real share certificate representing a tangible legal interest which is directly connected to control of the real estate product. A 'manager' will typically also have a different 'class' of shares in that company, providing that manager with rights and obligations to manage the real estate, to the benefit of, but at the cost of the collective of fractional owners. Due to the solid nature of the legal interest, the re-sale market and the exchange programmes are more attracted to fractionals, but the price point of entry is typically higher than timeshare and vacation clubs. The amenities should also therefore be of a very high standard, and the fixtures furniture and equipment in the real estate. This should also be reflected in the documents.

**Q.** I have decided to acquire a fractional interest in a high end resort in Thailand. I am quite familiar with sale and purchase agreements due to the business I conduct in my home country. However, I have also been provided with the 'supporting documents' for the fractional interest, and there appears to be a lot of paperwork. I own some timeshare interests, but now I want to use a higher standard of property, and I believe that my fractional will be more saleable than a timeshare

on the resale market. Should I be concerned on the volume of legal documentation involved in a fractional interest, in contrast to a timeshare? – *Simon Basilico, Sicily*

**A.** The sale and purchase agreement should contain the principle provisions such as payment terms; right of the seller to forfeit after several late payment and default periods; and some description of the usage attached to the fractional share, together with a description of how the reservation system works or will work governing the use of the fractional. It is necessary for the supporting legal documents to be substantive, simply to ensure the other elements of the structure are covered. As fractional interests genuinely are a 'legal' interest, then additional paperwork is required to give effect to and activate the legal rights of the purchaser. To support the legal interest in the relevant real estate product, there will be terms of use; perhaps an owners 'shareholders' agreement – which is quite similar to the concept of owners committees in real estate developments; and a management agreement to provide rights, protections and obligations for the manager of the relevant real estate encompassed within the fractional programme. If those documents were not available for inspection or review, then there would be cause for concern. Therefore it is standard for there to be a volume of supporting documents with the sale and purchase agreement.

**Q.** I am about to purchase a fractional interest in a property relating to a resort in Thailand. Are there any consumer protection laws which I could rely upon if I became unhappy? – *Steve Donoghue, Ireland*

**A.** There are no specific protections relating to 'fractional interests' but in Thailand, there is a developed and sophisticated body of law relating to consumer protection. There is a specific consumer protection act, but there are also consumer protections built into other laws, such as the latest Condominium Act implemented very recently. There is a Consumer Protection Board who also deal with complaints, and subject to a currently lengthy queue system, will actually send officers to inspect the subject of a consumer complaint. This protection extends to foreigners, provided of course that the foreigner has complied appropriately with Thai law.

This legal clinic was co-written by Desmond Hughes (Partner) and Christian Glanville (Partner) based in the Phuket and Koh Samui offices of Limcharoen Hughes & Glanville respectively, which also has offices in Bangkok and Ho Chi Minh City, and a new office in Bali, Indonesia opening soon. [www.limcharoen.com](http://www.limcharoen.com)